SUPREME COURT OF THE UNITED STATES

MICHAEL O. LEAVITT, GOVERNOR OF UTAH, ET AL., *v.* JANE L. ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 95–1242. Decided June 17, 1996

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

The severability issue discussed in the Court's *per curiam* opinion is purely a question of Utah law. It is contrary to our settled practice to grant a petition for certiorari for the sole purpose of deciding a state-law question ruled upon by a federal court of appeals. The justifications for that practice are well established: the courts of appeals are more familiar with and thus better qualified than we to interpret the laws of the States within their Circuits; the decision of a federal court (even this Court) on a question of state law is not binding on state tribunals; and a decision of a state-law issue by a court of appeals, whether right or wrong, does not have the kind of national significance that is the typical predicate for the exercise of our certiorari jurisdiction.*

The underlying substantive issue in this case generates what Justice Holmes once described as a kind of

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*The majority finds deference to the Court of Appeals "counter-indicative" because it reversed the District Court for the District of Utah on a point of Utah law. *Ante*, at 8. But courts of appeals owe district courts no deference on state-law questions; they review such matters *de novo*. See *Salve Regina College* v. *Russell*, 499 U. S. 225, 235–240 (1991) (rejecting reliance on the "local expertise" of the District Court). The geography of the Circuit, see *ante*, at 8–9, is utterly irrelevant.

"hydraulic pressure" that motivates ad hoc decision-making. *Northern Securities Co.* v. *United States*, 193 U. S. 197, 401 (1904) (dissenting opinion). Even if the court of appeals has rendered an incorrect decision, that is no reason for us to jettison the traditional guides to our practice of certiorari review. The doctrine of judicial restraint counsels the opposite course.

The majority counters with a pair of cases that supposedly show the absence of a settled practice regarding review of state-law questions. One of those—*Wichita Royalty Co.* v. *City Nat. Bank of Wichita Falls*, 306 U. S. 103 (1939)—was a diversity case decided in the wake of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). Just four weeks before we handed down *Erie*, the Court of Appeals had disclaimed its obligation to follow a controlling decision by the Texas Supreme Court (indeed, one rendered in an earlier stage of the same proceedings) on a matter of Texas commercial law. 306 U. S., at 106. The Court of Appeals then denied rehearing on the theory that the Texas court had changed its mind and now agreed with the former's view of the law. *Ibid.* Our decision to hear that case, which resulted in our rejection of the lower court's conclusion, was plainly motivated by a concern to give effect to *Erie*'s new mandate.

That leaves the single example of *Steele* v. *General Mills, Inc.*, 329 U. S. 433 (1947), in which this Court granted certiorari because the lower court's judgment "undermine[d] the transportation policy of Texas." *Id.*, at 438. Decided nearly 50 years ago and without successor, *Steele* is the exception that proves the rule.

However irregular such grants were in the past, they are now virtually unheard-of. Indeed, in 1980 we codified our already longstanding practice by eliminating as a consideration for deciding whether to review a case the fact that "a court of appeals has . . . decided an important state or territorial question in a way in conflict with applicable state or territorial law." Compare this Court's Rule 19(1)(b) (1970) with this Court's Rule 17.1

(1980). That deletion—the *only* deletion of an entire category of cases—was intended to communicate our view that errors in the application of state law are not a sound reason for granting certiorari, except in the most extraordinary cases. Tellingly, the majority does not cite a single example during the past 16 years in which we have departed from this reemphasized practice. This case should not be the first.

Accordingly, I respectfully dissent from the decision to grant the petition.